

ARMY BOARD FOR CORRECTION OF MILITARY RECORDS

RECORD OF PROCEEDINGS

IN THE CASE OF: [REDACTED]

BOARD DATE: 26 March 2024

DOCKET NUMBER: AR20230008467

APPLICANT REQUESTS:

- Correction of item 28 (Narrative Reason for Separation) on his DD Form 214 (Certificate of Release or Discharge from Active Duty) to reflect a separation based on the medical disability of post-traumatic stress disorder (PTSD)
- Permission to appear personally before the Board

APPLICANT'S SUPPORTING DOCUMENT(S) CONSIDERED BY THE BOARD:

- DD Form 149 (Application for Correction of Military Record)
- Documents associated with Army Board for Correction of Military Records (ABCMR) Docket Number AR20220002668
- Army Review Boards Agency (ARBA) memorandum with attached DD Forms 214

FACTS:

1. Incorporated herein by reference are military records which were summarized in the previous consideration of the applicant's case by the Army Board for Correction of Military Records (ABCMR) in Docket Number AR20220002668, on 9 November 2022.

2. The applicant states the Deputy Assistant Secretary of the Army (DASA), Review Boards (RB), granted him an upgraded character of service; however, the narrative reason was not changed. He is asking the Board to amend item 28 to show "PTSD" as the reason for his discharge.

3. A review of the applicant's service records reveal the following:

a. On 12 February 1981, the applicant enlisted in the U.S. Army Reserve (USAR) for 6 years; on 8 April 1981, he entered initial active duty for training to complete initial entry training. On 10 September 1981, the Army honorably released him from active duty and returned him to his USAR unit. On 30 April 1982, he entered the Reserve Officers' Training Corps (ROTC) and the USAR's Simultaneous Membership Program

(SMP); (the SMP allows students to serve in the USAR while continuing their studies and participating in their college's ROTC program).

b. Effective 15 March 1984, the Fourth ROTC Region discharged the applicant so he could accept a commission; on 16 March 1984, he executed his oath of office as a USAR commissioned officer. On 8 August 1986, the applicant entered active duty to complete Field Artillery Officer Basic Course (OBC).

c. On 10 February 1987, the applicant's command preferred court-martial charges against him for violating Article 112a (Wrongful Possession and Use of a Controlled Substance), Uniform Code of Military Justice (UCMJ); the DD Form 458 (Charge Sheet) lists the following two specifications:

- On 7 February 1987, the applicant wrongfully possessed 14 grams of marijuana
- On 7 February 1987, the applicant wrongfully used marijuana

d. On 25 February 1987, Major (MAJ) H__ P. B__, investigating officer under Article 32 (Investigation), UCMJ, reported his findings and recommended the applicant face trial by general court-martial.

e. On 26 February 1987, after consulting with counsel (a Judge Advocate General officer), the applicant voluntarily tendered his resignation, per chapter 5 (Resignation for the Good of the Service), Army Regulation (AR) 635-120 (Officer Resignations and Discharges). The applicant affirmed no one had coerced him, and counsel had advised him of the implications of his request.

f. On 13 May 1987, the DASA (RB) accepted the applicant's resignation and directed the applicant's under other than honorable conditions discharge.

g. On 3 June 1987, orders discharged the applicant accordingly. The applicant's DD Form 214 shows he was discharged under chapter 5, Resignation for the Good of the Service, AR 635-120 under other than honorable conditions discharge. He completed 8 months and 26 days of net active duty service. Additionally, item 13 (Decorations, Medals, Badges, Citations, and Campaign Ribbons Awarded or Authorized) lists the Army Service Ribbon, item 26 (Separation Code (SPD) states, "DFS," and item 28 shows, "Conduct Triable by Court-Martial."

h. On 25 March 1991, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgraded character of service.

(1) The applicant argued his discharge was inequitable because it was based on a single, isolated incident; his prior service had been exemplary, as was his then-current

service in the government. In support of his request, the applicant provided letters of support and documents reflecting his civil service.

(2) On 23 September 1991, the ADRB voted to deny relief; while acknowledging that a single event had led to the applicant's discharge, that single incident was a "willful act of serious misconduct. The applicant, by violating the Army's policy not to possess or use illegal drugs, compromised the special trust and confidence placed in him as a commissioned officer. The applicant had the duty to support and abide by the Army's policy."

i. On 9 December 2021, the applicant applied to the ABCMR for an upgraded character of service.

(1) The applicant stated that, when he committed his misconduct, he was suffering from undiagnosed PTSD. In a separate statement, he provided more details.

(a) The applicant described his background and pointed to a verbal disagreement he had had with a fellow Soldier while both were in basic combat training. As the disagreement escalated, the Soldier turned to the applicant, pointed a loaded M-16 rifle, and declared he would "blow my head off if I did not stop arguing." The applicant affirmed this was the first contributor to his PTSD, and the associated trauma caused him to drink beer heavily.

(b) A second trauma occurred during a drill where an Army National Guard (ARNG) unit was firing practice artillery rounds; the applicant and another officer (First Lieutenant (1LT) M__) were serving as forward observers, and the artillery rounds were directed by an ARNG colonel (COL) (COL W__). By way of context, the applicant explained that earlier that year, his battalion commander (Lieutenant Colonel (LTC) S__) had told the battalion that, as far as he was concerned, Soldiers within the battalion could shoot the applicant. Although LTC S__ later recanted his statement and apologized before he retired, some of the Soldiers continued to take that order seriously.

(c) During the aforementioned drill, the applicant noticed that one of the rounds had landed too close; he quickly grabbed the radio and advised the ARNG unit to stop firing. As this transpired, three officers from the applicant's USAR unit (1LT E__, Second Lieutenant (2LT) D__ and 2LT C__) ran towards him yelling "shoot him" while preparing to fire their weapons; the applicant was unarmed at the time. 1LT E__ told the other forward observer (1LT M__) to shoot the applicant, but 1LT M__ refused; 1LT M__ instead pointed to the round that had landed too close. When the three officers realized that the applicant had correctly reported how the artillery round had landed, the two 2LTs apologized to the applicant, but 1LT E__ did not. This incident caused the applicant to have bad dreams, and he continued to drink heavily.

(d) In 1986, the applicant entered active duty to attend OBC; in an effort to help the applicant, the ARNG COL (COL W__) called the school and told them he wanted the applicant to complete the course so the applicant could be promoted to major (MAJ). When one of the course instructors learned the applicant would be promoted directly from 2LT to MAJ, he started giving the applicant a hard time. The resulting stress, along with the memories of the two traumatic incidents, led the applicant to more drinking and to the use of marijuana. The applicant stated, "I just could not deal with everything that had been thrown at me. I often thought of committing suicide." "On the second to the last day of OBC, I was caught smoking marijuana in the Bachelor Officer Quarters (BOQ). I was arrested and brought up on charges."

(e) The applicant went on to detail his life after his adverse separation and noted that, in 2004, he had served honorably in the ARNG, but that he had started reliving the traumatic events of his past during his ARNG service, and he had a hard time coping.

(f) In 2010, he tried to get help from the Department of Veterans Affairs (VA), but they refused due to his character of service. Recently, in 2020, the VA advised him of a new policy pertaining to under other than honorable conditions characters of service and PTSD; as a result, he filed his ABCMR application.

(g) In support of his request, the applicant submitted a Biopsychosocial and Diagnostic Assessment, which concluded that the applicant had incurred PTSD during his military service.

(2) The ARBA Medical Advisor conducted a medical review of the applicant's case and opined, "the applicant has a mitigating BH (behavioral health) condition, PTSD. As PTSD is associated with use of illicit drugs or alcohol to self-medicate, there is a nexus between his diagnosis of PTSD and his use of marijuana after experiencing a traumatic event during Basic Training."

(3) After considering the applicant's arguments and evidence and taking into account the ARBA Medical Advisor's opinion, the Board recommended the denial of relief.

(4) On 5 December 2022, the DASA (RB) overrode the Board's recommendation and directed the issuance of a DD Form 214 reflecting a general discharge under honorable conditions; the DASA (RB)'s memorandum did not address the applicant's narrative reason for separation.

4. Clemency guidance to the Boards for Correction of Military/Navy Records (BCM/NR) does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority to ensure each case will be assessed on its own merits. In determining whether to grant relief BCM/NRs shall consider the prospect

for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment. This includes consideration of changes in policy, whereby a service member under the same circumstances today would reasonably be expected to receive a more favorable outcome.

5. Published guidance to the BCM/NRs clearly indicates that the guidance is not intended to interfere or impede on the Board's statutory independence. The Board will determine the relative weight of the action that led to the discharge and whether it supports relief or not. In reaching its determination, the Board shall consider the applicant's petition, available records and/or submitted documents in support of the petition.

6. MEDICAL REVIEW:

a. Request: Following the ABCMR's upgrade of his UOTHC characterization of service to general, the applicant is requesting his DD Form 214 (Certificate of Release or Discharge from Active Duty) reflect a separation based on the medical disability of post-traumatic stress disorder (PTSD).

b. The specific facts and circumstances of the case can be found in the ABCMR Record of Proceedings (ROP). Below is a brief summary of information pertinent to this advisory:

- Applicant enlisted in the U.S. Army Reserve (USAR) on 12 February 1981.
- On 8 April 1981, he entered initial active duty for training to complete initial entry training. On 10 September 1981, the Army honorably released him from active duty and returned him to his USAR unit. On 30 April 1982, he entered the Reserve Officers' Training Corps (ROTC) and the USAR's Simultaneous Membership.
- Effective 15 March 1984, the Fourth ROTC Region discharged the applicant so he could accept a commission; on 16 March 1984, he executed his oath of office as a USAR commissioned officer. On 8 August 1986, the applicant entered active duty to complete Field Artillery Officer Basic Course (OBC).
- On 10 February 1987, the applicant's command preferred court-martial charges against him for violating Article 112a (Wrongful Possession and Use of a Controlled Substance), Uniform Code of Military Justice (UCMJ); the DD Form 458 (Charge Sheet) lists the following two specifications:
 - On 7 February 1987, the applicant wrongfully possessed 14 grams of marijuana
 - On 7 February 1987, the applicant wrongfully used marijuana
- On 13 May 1987, the DASA (RB) accepted the applicant's resignation and directed the applicant's under other than honorable conditions discharge. On 3

June 1987, orders discharged the applicant accordingly. The applicant's DD Form 214 shows Separation Code "DFS," and item 28 shows, "Conduct Triable by Court-Martial."

- On 25 March 1991, the applicant petitioned the Army Discharge Review Board (ADRB), requesting an upgraded character of service. The ADRB voted to deny relief.
- On 9 December 2021, the applicant applied to the ABCMR for an upgraded character of service. The DASA (RB) overrode the Board's recommendation and directed the issuance of a DD Form 214 reflecting a general discharge under honorable conditions; the DASA (RB)'s memorandum did not address the applicant's narrative reason for separation.

c. Review of Available Records Including Medical:

The Army Review Boards Agency (ARBA) Behavioral Health (BH) Advisor reviewed this case. Documentation reviewed included the applicant's completed DD Form 149, documents from ABCMR Docket Number AR20220002668, and ABCMR Record of Proceedings (ROP). The VA electronic medical record and DoD health record available for review through Joint Longitudinal View (JLV). Lack of citation or discussion in this section should not be interpreted as lack of consideration.

d. The applicant states the Deputy Assistant Secretary of the Army (DASA), Review Boards (RB), granted him an upgraded character of service; however, the narrative reason was not changed. He is asking the Board to amend item 28 to show "PTSD" as the reason for his discharge.

e. Due to the period of service, the applicant's electronic medical record is void of any documentation. However, the applicant's available service record does not show he was issued a permanent physical profile rating or was treated for a behavioral health condition while in service. The applicant's service record shows he successfully completed portions of his enlistment and continued to be promoted. Overall, there is no indication in his record of any condition affecting his ability to perform his duties, that failed retention standards, or that rendered him unfit for military service.

f. The VA electronic record indicates the applicant is currently 90% service connected, including 70% for PTSD. Per the VA electronic record, the applicant initiated behavioral health services with the VA in January 2024 and is currently in the process of connecting with a provider. The applicant reported a history of prior PTSD treatment with a civilian provider and his prior ABCMR application included an assessment that diagnosed him with PTSD.

g. Based on all available information, it is the opinion of this Agency Behavioral Health Advisor that there is insufficient evidence to support a referral to the IDES process at this time. Although the applicant has been 70% service connected for PTSD, VA examinations are based on different standards and parameters; they do not address

whether a medical condition met or failed Army retention criteria or if it was a ratable condition during the period of service. Therefore, a VA disability rating would not imply failure to meet Army retention standards at the time of service. A subsequent diagnosis of PTSD through the VA is not indicative of an injustice at the time of service. Furthermore, even an in-service diagnosis of PTSD is not automatically unfitting per AR 40-501 and would not automatically result in the medical separation processing. Based on the documentation available for review, there is no indication that an omission or error occurred that would warrant a referral to the IDES process. In summary, his separation process appears proper, equitable and free of error, and insufficient new evidence has been provided to determine otherwise.

Kurta Questions:

(1) Does any evidence state that the applicant had a condition or experience that may excuse or mitigate a discharge? Not applicable.

(2) Did the condition exist or experience occur during military service? Not applicable.

(3) Does the condition or experience actually excuse or mitigate the discharge? Not applicable.

BOARD DISCUSSION:

1. The Board determined the evidence of record was sufficient to render a fair and equitable decision. As a result, a personal appearance hearing is not necessary to serve the interest of equity and justice in this case.

2. After reviewing the application, all supporting documents, and the evidence found within the military record, the Board found that relief was not warranted. The applicant's contentions, the military record, and regulatory guidance were carefully considered. The evidence of record shows court-martial charges were preferred against the applicant for wrongfully possessing and using used marijuana. He chose to voluntarily resign and separate in lieu of facing the court-martial. His request was approved, and he was accordingly discharged for conduct triable by a court-martial. His DD Form 214 shows he completed 8 months and 26 days of net active duty service. He was assigned Separation Code "DFS" and Narrative Reason for Separation "Conduct Triable by Court-Martial." The Board found no error or injustice in his narrative reason for separation. The Board acknowledges that the DASA (RB) found there is sufficient evidence to grant relief and that he directed issuing the applicant a DD Form 214 showing his characterization of service as Under Honorable Conditions (General). This

action, however, did not change the underlying reason for his separation. The Board reviewed and agreed with the medical reviewer's finding insufficient evidence to support a referral to the integrated disability evaluation system.

BOARD VOTE:

<u>Mbr 1</u>	<u>Mbr 2</u>	<u>Mbr 3</u>	
:	:	:	GRANT FULL RELIEF
:	:	:	GRANT PARTIAL RELIEF
:	:	:	GRANT FORMAL HEARING
■	■	■	DENY APPLICATION

BOARD DETERMINATION/RECOMMENDATION:

The evidence presented does not demonstrate the existence of a probable error or injustice. Therefore, the Board determined the overall merits of this case are insufficient as a basis for correction of the records of the individual concerned.

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I certify that herein is recorded the true and complete record of the proceedings of the Army Board for Correction of Military Records in this case.

REFERENCES:

1. AR 635-120, then in effect, provided policies and procedures for separating officers from active duty. AR 600-8-24 (Officer Transfers and Discharges) later superseded this regulation, and the current version has an effective date of 8 March 2020.

a. Chapter 5 stated an officer could submit a resignation for the good of the service when court-martial charges had been preferred with a view toward trial by general court-martial.

b. The regulation additionally stated that a resignation for the good of the service, when approved at Headquarters, Department of the Army (HQDA), normally resulted in an under other than honorable conditions character of service; however, HQDA could also provide an honorable or general discharge, as appropriate.

c. Paragraph 3-9 (Resignation for the Good of the Service in Lieu of General Court-Martial), within AR 600-8-24, addresses resignation in lieu of trial by court-martial. In addition to authorizing officers to submit a resignation in lieu of trial by general court-martial, the regulation states:

(1) When forwarding the officers resignation to HQDA, the commander exercising general court-martial authority will include the following documents:

- Copy of court-martial charges
- Copy of all reports of investigation
- Any documentary evidence that supports acceptance of resignation
- Psychiatric evaluation when grounds exist indicating officer is (or was at the time of the misconduct) mentally incompetent
- Explanation of any delays

(2) "An officer who resigns for the good of the Service (regardless of the character of service received) is barred from rights under laws administrated by the Veterans Affairs based on the period of service from which the officer resigned. Exceptions are War Risk, U.S. Government (converted), National Service Life Insurance, or Service Member's Group Life Insurance (see (Title) 38 (Veterans' Benefits), USC (United States Code), (section) 1965 (Definitions))."

2. AR 635-8 (Separation Processing and Documents), currently in effect, includes policies and procedures for DD Forms 214 preparation. Regarding item 28 of the DD Form 214, the regulation states, "This (entry) is based on regulatory or other authority and can be checked against the cross reference in AR 635-5-1 (SPD Codes).

3. AR 635-5-1, currently in effect, states:

a. Officers involuntarily separated based on a resignation in lieu of trial by court-martial receive the SPD "DFS." The associated narrative reason for separation is "In Lieu of Trial by Court-Martial," and AR 600-8-24 is cited as the authority for discharge.

b. Officers who have resigned due to miscellaneous or general reason receive the SPD (FND," with a narrative reason for separation of "Miscellaneous/General Reason." The regulatory authority is AR 600-8-24.

c. The following SPD are used for officers involuntarily discharged due to disability:

- "JEB" – Disability, severance pay, non-combat related (enhanced (i.e., per the Integrated Disability Evaluation System (IDES)); AR 635-40 (Disability Evaluation for Retention, Retirement, or Separation)
- "JER" – Disability, other (enhanced); AR 635-40

4. AR 635-40, currently in effect, states Federal law defines the term, physical Disability Evaluation System (DES), in part, as a system or process within the Department of Defense for evaluating the nature and extent of disabilities affecting members of the Armed Forces that is operated by the Secretaries of the military departments and is comprised of medical evaluation boards (MEB), physical evaluation board (PEB), and mechanisms for the final disposition of disability evaluations.

a. Integrated Disability Evaluation System. The IDES features the following:

(1) A single set of disability medical examinations that may assist the DES in identifying conditions that may render the Soldier unfit.

(2) A single set of disability ratings provided by VA for use by both VA and the DES. The DES applies these ratings to the conditions it determines to be unfitting and compensable. The Soldier receives preliminary ratings for their VA compensation before the Soldier is separated or retired for disability.

b. The DES process begins when either of the events below occurs:

(1) Medical authority issues the Soldier a permanent profile approved in accordance with the provisions of AR 40–501 (Standards of Medical Fitness) and the profile contains a numerical designator of P3/P4 in any of the serial profile factors for a condition that appears not to meet AR 40-501 medical retention standards. Within (but not later than) one year of diagnosis, the Soldier must be assigned a P3/P4 profile to refer the Soldier to the DES.

(2) A Military Occupational Specialty Administrative Retention Review (MAR2) refers the Soldier to the DES after determining he/she fails to meet officer area of

concentration (AOC) medical requirements and does not qualify for a branch transfer due to medical limitations.

5. On 3 September 2014, the Secretary of Defense directed the Service Discharge Review Boards (DRBs) and Service Boards for Correction of Military/Naval Records (BCM/NRs) to carefully consider the revised PTSD criteria, detailed medical considerations and mitigating factors when taking action on applications from former service members administratively discharged under other than honorable conditions and who have been diagnosed with PTSD by a competent mental health professional representing a civilian healthcare provider in order to determine if it would be appropriate to upgrade the characterization of the applicant's service.

6. On 25 August 2017, the Office of the Undersecretary of Defense for Personnel and Readiness issued clarifying guidance for the Secretary of Defense Directive to DRBs and BCM/NRs when considering requests by Veterans for modification of their discharges due in whole or in part to: mental health conditions, including PTSD; Traumatic Brain Injury; sexual assault; or sexual harassment. Boards are to give liberal consideration to Veterans petitioning for discharge relief when the application for relief is based in whole or in part to those conditions or experiences. The guidance further describes evidence sources and criteria and requires Boards to consider the conditions or experiences presented in evidence as potential mitigation for misconduct that led to the discharge.

7. On 25 July 2018, the Under Secretary of Defense for Personnel and Readiness issued guidance to Military DRBs and BCM/NRs regarding equity, injustice, or clemency determinations. Clemency generally refers to relief specifically granted from a criminal sentence. BCM/NRs may grant clemency regardless of the type of court-martial. However, the guidance applies to more than clemency from a sentencing in a court-martial; it also applies to other corrections, including changes in a discharge, which may be warranted based on equity or relief from injustice.

a. This guidance does not mandate relief, but rather provides standards and principles to guide Boards in application of their equitable relief authority. In determining whether to grant relief on the basis of equity, injustice, or clemency grounds, BCM/NRs shall consider the prospect for rehabilitation, external evidence, sworn testimony, policy changes, relative severity of misconduct, mental and behavioral health conditions, official governmental acknowledgement that a relevant error or injustice was committed, and uniformity of punishment.

b. Changes to the narrative reason for discharge and/or an upgraded character of service granted solely on equity, injustice, or clemency grounds normally should not result in separation pay, retroactive promotions, and payment of past medical expenses

or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded service characterization.

8. Title 10, USC, section 1556 (Ex Parte Communications Prohibited) provides the Secretary of the Army shall ensure that an applicant seeking corrective action by ARBA is provided a copy of all correspondence and communications, including summaries of verbal communications, with any agencies or persons external to agency or board, or a member of the staff of the agency or Board, that directly pertains to or has material effect on the applicant's case, except as authorized by statute.

//NOTHING FOLLOWS//